

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) REGULATIONS
2006**

2006 NO. 588

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument makes a number of disparate amendments to Regulations dealing with income-related benefits, namely the Income Support (General) Regulations 1987 (“IS Regulations”) the Jobseeker’s Allowance Regulations 1996 (“JSA Regulations”), the Council Tax Benefit Regulations 2006 (“CTB Regulations”), the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) (“CTB(SPC) Regulations”), the Housing Benefit Regulations 2006 (“HB Regulations”) and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) (“HB(SPC) Regulations”). (These six sets of Regulations are collectively referred to in this memorandum as “the IRB Regulations”. It also makes a minor supporting revocation to the Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) (No. 3) Regulations 2005 (“HBCTB(MA) Regulations”), and an amendment and a revocation to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (“HBCTB(CP) Regulations”) which relate to amendments to the CTB Regulations and the CTB(SPC) Regulations concerning the 100% rate of appropriate maximum Council Tax Benefit.

The IS, JSA, CTB and HB Regulations are amended:

- so that persons aged less than age 60, who opt not to take an available payment from the Board of the Pension Protection Fund (PPF) are not treated as possessing the amount of any income or capital deferred.

These Regulations also amend the HB/CTB (SPC) Regulations 2006 to treat payments made by the Board of the PPF as income.

The IS Regulations alone are amended so as to:

- remove a prescribed category of person that no longer exists
- remove provisions that currently provide protected sums for those in board and lodging accommodation or hostel dwellers as no cases still exist.

The JSA Regulations alone are amended so as to

- update a legislative reference for the Mental Health (Scotland) Act 1984.

The CTB and CTB (SPC) Regulations alone are amended so as to:

- put beyond doubt that in calculating alternative maximum council tax benefit (AMCTB) account is taken of all reductions made under the Local Government Finance Act 1992, and in cases where 100% AMCTB applies, discounts are also taken into account. This ensures that entitlement to AMCTB does not exceed net Council Tax liability following any reduction or discount. In addition they ensure that there is equivalent provision in relation to the circumstances in which people can qualify for the 100% rate of AMCTB in both the CTB and CTB(SPC) Regulations.

The HB Regulations alone are amended so as to:

- revise a cross-reference to the calculation of eligible rent in the provisions for the calculation of notional income; and
- ensure hostel dwellers may receive HB from the benefit week they move into a hostel instead of, as at present, the start of the next benefit week.

The State Pension Credit Regulations 2002 (“SPC Regulations”) are amended:

- to treat periodic payments made by the Board of the PPF as income; and
- to make further provision in relation to the Social Security (Hospital In-Patient) Regulations 2005.

These Regulations also amend The Social Fund Maternity and Funeral Expenses (General) Regulations 2005 (“SFMFE Regulations”) as a result of the extension of child benefit.

These Regulations also make a small amendment to The Social Security (Hospital In-Patient) Regulations 2005 (S.I. 2005/3360).

3. Matters Of Special Interest To The Joint Committee On Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Twice a year the Department puts forward a package of miscellaneous changes to the IRB Regulations. This enables minor issues to be dealt with as a package rather than by preparing individual regulations.

5. Extent

5.1 This instrument extends to Great Britain.

6. The European Convention On Human Rights

6.1 As the Instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 Pension Protection Fund (PPF)

7.2 Ministers propose to treat payments from the Board of the PPF in the same way as occupational pensions.

7.3 Ministers therefore propose to amend the IS, JSA, CTB and HB regulations so that persons aged under 60, who opt not to take payments from the Board of the PPF when these are available to them, will not be treated as possessing the amount of any income/capital deferred, under the notional income rules.

7.4 Ministers also propose to amend HB/CTB (Persons who have attained the qualifying age for state pension) Regulations 2006 to take into account as income, payments from the Board of the PPF in line with the treatment of occupational pension schemes for claimants whose HB/CTB would be determined using those Regulations.

7.5 Ministers also propose to amend the SPC Regulations so that PPF periodic payments can be treated as income within Pension Credit. The term "PPF periodic payments" will be defined in section 17(1) of the State Pension Credit Act by means of the Pensions Act 2004 (PPF Payments and FAS Payments) (Consequential Provisions) Order 2006 (S.I. 2006/343).

7.6 Prescribed Category of Person

7.7 As part of the new system of bereavement benefits that came into effect on 9th April 2001, a transitional five year period was established to allow new widows/widowers aged between 55 and 60 on 9th April 2001 to claim IS. This applied if their spouse died during the period from 9th April 2001 to 9th April 2006 and they claimed IS as a single claimant.

7.8 This transitional provision, paragraph 16A of Schedule 1B of the IS Regulations, will cease to have any effect on 10th April 2006 so we propose to remove it from the regulations.

7.9 Protected Sums

7.10 Schedule 3A of the IS Regulations was made necessary by the removal from the regulations of the special treatment of those in board and lodging accommodation. Before April 1989, such claimants received their board and lodging charge plus a personal allowance and premiums, but were not eligible for housing benefit. From

April 1989, they received personal allowance and premiums, and became eligible for housing benefit. Schedule 3A provided transitional protection for existing claimants in the form of a “protected sum” that made up the difference if there was a loss of income.

7.11 Schedule 3B of the IS Regulations provided transitional protection for those hostel dwellers who were, similarly, moved on to housing benefit in October 1989.

7.12 No such cases still exist so we propose to remove the Schedules from the regulations.

7.13 Membership of the Household

7.14 The Mental Health (Care and Treatment) (Scotland) Act (Modification of Subordinate Legislation) Order 2005 amended legislative references to various pieces of subordinate legislation in consequence of the Mental Health (Care and Treatment) (Scotland) Act 2003.

7.15 JSA Regulation 78(3)(a), circumstances in which a person is to be treated as being or not being a member of the household, contains an out of date reference as a result of the above order.

7.16 An amendment is needed to update the reference to section 102 of the National Health Service (Scotland) Act 1978 (state hospitals).

7.17 Amendments to the Housing Benefit Regulations in respect of notional income

7.18 The HB Regulations contain provisions for calculating the weekly equivalent of a calendar monthly rental liability. These provisions are to be amended from April 2006 by the HBCTB(MA)Regulations. The amendment has been achieved by substituting the provisions of one sub-paragraph to a regulation with two sub-paragraphs. The addition of a sub-paragraph meant that consequential amendments were made to regulations containing a cross- reference to the original sub-paragraph so that the cross-reference was to both of the new sub-paragraphs. These consequential amendments were also included in the HBCTB(MA)Regulations.

7.19 One of the regulations amended was that containing the provisions for calculating the notional income possessed by a person, whose claim would be determined using the HB/CTB (SPC) Regulations. The intention was that the equivalent provision for a person whose claim would be processed using the HB/CTB Regulations should also have its cross-reference amended. However, due to an oversight this was not done. So that the provisions for calculating notional income are the same in the HB/CTB (SPC) Regulations and in the HB/CTB Regulations, the necessary amendment is included in this set of regulations.

7.20 Amendments to the Housing Benefit Regulations 2006 in respect of hostel dwellers

7.21 The HBCTB(MA) Regulations contained a provision that allowed entitlement to housing benefit for hostel dwellers to begin in the week the rental liability began rather than the following week.

7.22 Since the HBCTB(MA) Regulations were made and laid, the Housing Benefit (General) Regulations 1987 and Council Tax Benefit (General) Regulations 1992 have been consolidated, with effect from 6 March 2006. There are four sets of regulations. The first two sets relate to working age claimants and claimants who or whose partner has attained the qualifying age for State Pension Credit, but one or both of them are on Income Support or income-based Jobseeker's Allowance. They are The Housing Benefit Regulations 2006 and The Council Tax Benefit Regulations 2006. The other two sets relate to people who have or whose partner has attained the qualifying age for State Pension Credit and neither of them are on Income Support or an income-based Jobseeker's Allowance. Again there is a set for Housing Benefit and a set for Council Tax Benefit. They are referred to as the Housing Benefit (SPC) Regulations and the Council Tax Benefit (SPC) Regulations.

7.23. As the HBCTB(MA) Regulations are to come into force later than the consolidated regulations, the HBCTB(CP) Regulations amended The HBCTB(MA) Regulations so that it reflects the numbering of the consolidated Housing Benefit (SPC) regs. However, they did not amend The HBCTB(MA) Regulations to reflect the numbering of the Housing Benefit working age regulations. This means that the new provisions for hostel dwellers have been carried forward into the Housing Benefit (SPC) Regulations but not the Housing Benefit working age provisions.

7.24 The amending regulation carries the provision forward to the working age provisions.

7.25 Amendments to the Council Tax Benefit Regulations 2006 and the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

7.26 Alternative maximum council tax benefit (AMCTB) is a form of council tax benefit payable in certain circumstances to persons who are not eligible for council tax benefit, or are entitled to less benefit, under the ordinary rules. An amendment was made to Schedule 2 of the Council Tax Benefit (General) Regulations 1992 by regulation 3(12) of the HBCTB(MA) Regulations to increase the maximum amount of AMCTB from 25% to 100% in cases where the householder is in a defined category of student and the second adult is in receipt of an income-related benefit from 1st April 2006. The defined category of students could not apply to those to whom the modified version of the Council Tax Benefit (General) Regulations 1992 applied (ie certain persons who had attained the qualifying age for State Pension Credit). It was considered that they would qualify for the same amount as council tax under the ordinary rules but this may not be so in every case. As a result of the consolidation exercise the HBCTB(MA) Regulations were

amended by the HBCTB(CP) Regulations. Regulation 3(12) and the provisions in the HBCTB(CP) Regulations which related to it are revoked. The amendments to the CTB Regulations and the CTB(SPC) Regulations made by regulations 9(4) and 11(4) ensure that the circumstances in which a person can qualify for the 100% rate of AMCTB are the same.

7.27 An amendment was made to the Council Tax Benefit (General) Regulations 1992 to clarify that CTB can only be paid in respect of council tax liability less any discount or reduction which reflects that amount of total liability for council tax a person is required to pay. A parallel provision in relation to reductions was not included for the provisions which govern the calculation of AMCTB. These amendments ensures that account is taken of all reductions made under the Local Government Finance Act 1992 in all cases where AMCTB is applicable, and that in cases where the 100% rate of AMCTB is applicable, discounts are also taken into account. This ensures that entitlement to AMCTB does not exceed net council tax liability following any reduction or discount.

7.28 Social Fund Maternity and Funeral Expenses Regulations

7.29 SFMFE Regulation 8(2) lists those people who are excluded from the “immediate family member” and consequently, at Regulation 8(8), the “nature and extent of contact” tests with regard to Funeral Payment applications.

7.30 As a consequence of the extension of child benefit to certain 19 year olds in non-advanced education and certain 19 year olds on approved training courses as outlined in The Child Benefit (General) Regulations 2006 S.I. 2006/223, these groups need to be added to the list of those excluded from the above tests.

7.31 We propose to amend the SFMFE Regulation 8(2)(b) to add 19 year olds who are qualifying young persons for the purposes of Child Benefit to the list of those excluded from the “immediate family member” and “nature and extent of contact” tests.

7.32 Amendments to the Social Security (Hospital In-Patient) Regulations 2005 and further amendments to the State Pension Credit Regulations 2002

7.33 The Social Security (Hospital In-Patient) Regulations 2005 provide that, except in specified circumstances, a person’s benefit is no longer adjusted after receiving free NHS treatment as a hospital in-patient for more than 52 weeks.

7.34 It is necessary that we address a typographical error in Regulation 2(3)(b) to ensure that any increase in benefit, payable in respect of an adult or child dependent, may be paid to a third party for the benefit of a child of the beneficiary where the beneficiary and dependent have been hospital in-patients for 52 weeks or more.

7.35 Two provisions in the State Pension Credit Regulations 2002 are amended by Regulation 4(3) and (4) to make further provision in relation to the Social Security (Hospital In-Patient) Regulations 2005:

- A Pension Credit award may include an element that is referred to as a 'transitional amount'¹. The transitional amount is reduced when their appropriate minimum guarantee increases either by virtue of annual up-rating or subsequent entitlement to an additional amount. The exception to the 'erosion' rule is where a pensioner's appropriate minimum guarantee has been downrated because they were a hospital in-patient; and is restored to the normal level when they leave hospital. The State Pension Credit Regulations 2002 are amended to ensure that any transitional amount is not eroded when full Pension Credit is restored as a result of the abolition of the 52-week hospital downrating rule:
- The 2002 Regulations are also amended to provide that the savings credit, the standard minimum guarantee and any additional amount of Pension Credit for people with a prison sentence who are detained in a mental hospital will be nil.

7.36 Consultation

7.37 The Social Security Advisory Committee agreed that these regulations should not be referred to it for formal consultation. The Local Authority Associations were also consulted in respect of the amendments relating to housing benefit and council tax benefit and are content with the regulations.

8. Regulatory Impact And Costs

8.1 A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business, charities and voluntary bodies.

8.2 The impact on the public sector is nil.

9. Contact Details

9.1 Sarah Cooke at the Department for Work and Pensions (telephone 0113 2324931, e-mail sarah.p.cooke1@jobcentreplus.gsi.gov.uk) can answer any queries regarding the instrument.

¹ A transitional amount was included to ensure that a pensioner did not lose out as a result of the new rules on transition from Income Support or Jobseeker's Allowance to Pension Credit in October 2003.